UNITED STATES
v.
LESLIE AND MAXINE HORN

IBLA 74-207 Decided July 8, 1974

Appeal from the decision of Administrative Law Judge Ratzman declaring the Gold Bar placer mining claim to be null and void. (Contest No. OR-10041).

Affirmed.

Mining Claims: Determination of Validity -- Mining Claims: Discovery: Generally

No discovery of a valuable mineral deposit is demonstrated on a placer mining claim which yields small amounts of gold from the bed of a river but which is suitable only for recreation mining because it could never be expected to produce an economic return in any way commensurable with the labor and cost involved in such production.

Administrative Procedure: Burden of Proof -- Mining Claims: Contests -- Mining Claims: Determination of Validity

Government mineral examiners in determining the validity of a mining claim need only examine the claim to verify whether the claimant has made a discovery: they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts to establish the Government's prima facie case.

Administrative Procedure: Burden of Proof -- Mining Claims: Contests -- Mining Claims: Determination of Validity

When the Government contests a mining claim it bears only the burden of going forward

with sufficient evidence to establish a prima facie case; the burden then shifts to the claimant to show by a preponderance of the evidence that his claim is valid.

APPEARANCES: Leslie Horn and Maxine Horn, pro se; Elden M. Gish, Esq., Office of the General Counsel, Dept. of Agriculture, Portland, Oregon.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Leslie and Maxine Horn have appealed from the decision of the Administrative Law Judge, dated February 18, 1974, which held that their Gold Bar placer mining claim is null and void.

The claim is situated in the Siskiyou National Forest, Josephine County, Oregon, on a stretch of the Illinois River, which crosses the claim. Improvements include a cabin, shed, bunkhouse, a platform in the river, and a suspended cable crossing over the river.

The Horns purchased the claim in 1967 from Mr. Horn's father.

Contestant's only witness at the hearing was Colver F. Anderson, a graduate mining engineer with more than 30 years experience, an employee of the Forest Service. Anderson examined the claim in 1965 (when he was prevented from crossing the river by high water) and again in 1971. He testified that very intensive placer mining along virtually the entire length of the river from about 1852 to the relatively recent past yielded many millions of dollars in gold, but tended to exhaust the potential for any present commercial operation. He indicated that there is gravel on the claim which at one time could have been a paying bar but stated, "This country has all been worked right down to the bedrock which shows as a gray mass in the * * * picture." (Exh. 2) (Tr. 8)

Anderson testified that serpentine rock has been exposed where the gravels have been loosened or mined off and the river has carried it away at periods of high water. He noted that at one point it appeared that someone had mined the river using scuba diving equipment when the water was higher, and that the claimants "had a little floating dredge outfit." He found a place where there was evidence that boulders had been moved and piled so as to expose the smaller gravel at bedrock. He panned a sample of this material and got perhaps a spoonful of black sand concentrate "and one very tiny color" of gold which was entirely too small to weigh. (Tr. 10-11)

He said that it is a very difficult place to work because there is a large amount of boulders which have to be moved out of the way to get to the gravel beneath, "but this is an expensive way to mine

and there is not enough volume of gravel to make a commercial operation out of it. Its strictly a recreation project." (Tr. 11) He stated that the place where he panned his samples was the only place he saw mining evidence, and he saw no other exposed gravel that looked like it would pay to sample. He concluded that it was perhaps seventy to a hundred years ago that the major portion of the gold was mined out of this river system.

The testimony given by Mr. Horn tended to support that given by Anderson, saying, with reference to the sampling point, "* * * we did dredge right here, but the water went down * * * leaving it dry so we couldn't go down any farther. And it's like he says, there is a lot of big rock, heavy rock, and it's about five feet down to bedrock. It takes a long time of hard work to get down to bedrock." (Tr. 13) He described his operation at another point in the river using a floating four-inch dredge in 1972. He stated, "We spent approximately thirty-five hours, I would say, of sluicing and moving boulders." He said they cleaned the dredge twice, and he brought the recovery from each cleaning into the hearing room in small spice bottles. Each bottle contained water, black sand and visible gold. Anderson estimated the value of the gold in the first bottle at about five dollars and that in the second bottle at five to seven dollars.

The claimants introduced two certificates of assays of samples of black sand gold concentrated, one made in 1972 (Exh. A) and one in 1967 (Exh. B). The 1972 assay showed potential values of $1.87 per ton in gold and $0.44 per ton in silver, while the 1967 assay showed a gold potential of $53.20 per ton.

Even by adjusting these values to conform to today's higher prices we could not find that these assays evinced a discovery of a valuable mineral deposit "which would justify a man of ordinary prudence in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine," the time honored test of discovery first articulated in Castle v. Womble, 19 L.D. 457 (1894), and followed ever since by this Department and the courts. The reason for our failure to so find is that the tremendous amount of time, labor and cost involved, combined with the small amount of gold bearing sands apparently available, demonstrate almost conclusively that the financial returns cannot be expected to be commensurate. Horn testified that only the river bottom is subject to mining, and he has never recovered even a ton of black sand or concentrate from this claim. The findings of some mineral consisting of minute gold flakes is not a substitute for discovery under the mining laws. United States v. Bradliner Enterprises, Inc., 13 IBLA 184 (1973).

Recreation mining is a legitimate activity on federal land which is open to mining and prospecting, but no property right vests in the miner or prospector until and unless he can demonstrate that he has discovered a valuable deposit of mineral as defined in Castle v. Womble, supra.

Appellants contend that the mineral examiner should have arranged to meet them on the claim so that a better examination might have been conducted. We acknowledge that this procedure would have been preferable, but it is not compulsory, and, in light of all of the evidence presented, we are of the opinion that no different conclusion would have been reached in this case.

Appellants also argue that the examiner did not dig the necessary four or five feet to reach bedrock, where, they say, he would have encountered much higher values. In seeking to determine the validity of a mining claim government mineral examiners need only to examine the claim to verify whether the claimant has made a discovery; they are not required to perform discovery work, to explore or sample beyond the claimant's workings, or to rehabilitate alleged discovery cuts in order to establish the Government's prima facie case. United States v. L. B. McGuire, 4 IBLA 307 (1972).

When the Government contests a mining claim it bears only the burden of going forward with sufficient evidence to establish a prima facie case. The burden then shifts to the claimants to show by a preponderance of the evidence that their claim is valid. United States v. William C. King,
15 IBLA 210 (1974). The claimants in this instance did not succeed in demonstrating the validity of their claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Edward W. Stuebing
Administrative Judge

We concur:

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Joan B. Thompson
Administrative Judge

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Douglas E. Henriques
Administrative Judge